

December 20, 2002

Docket Management System
U.S. Department of Transportation
Room Plaza 401
400 Seventh Street, SW
Washington, D.C. 20590-0001

RE: Docket Number FAA-2002-13378 (Proposed Rule Regarding Reports by Carriers on Incidents Involving Animals During Air Transport)

To Whom It May Concern:

The Doris Day Animal League and the organizations listed below jointly submit these comments. We wish to thank the Federal Aviation Administration for publishing this Proposed Rule to implement Section 710 of P.L. 106-181, the *Wendell H. Ford Aviation and Investment and Reform Act for the 21st Century*. Section 710 requires that any airline involved in the loss, injury, or death of an animal being transported by that airline report that incident to the government (regardless of whether or not the owner or guardian files a complaint) and that the government publish such information. The availability of such data will help the public evaluate carriers' records with respect to the care of animals they are carrying and will motivate the airlines to improve their poor performance in this area. In the absence of such accountability, the airlines have been able to hide from public view their abysmal record of animal care. In fact, as recently as just this past June, the U.S. Department of Agriculture filed new cases against U.S. Airways and Delta for violating the *Animal Welfare Act*.

This proposed information requirement is necessary and, indeed, fundamental to implementing Section 710 of P.L. 106-181 as Congress intended. We think the agency has prescribed the appropriate information to be submitted regarding such incidents and are glad to see that it will be published in the *Air Travel Consumer Report*. We also believe that the agency is accurate in its determination that this new rule will cause minimal if any burden for airlines, since a report will have to be filed only when there is an animal-related incident and only by the carrier involved. This will still be the case if the definition of "animal" is expanded as we recommend (see further comments below).

Broaden Definition of "Animal"

We urge the agency to expand the definition of "animal" beyond the narrow one contained in the Proposed Rule. The reporting requirements should cover incidents of loss, injury or death of *any* warm- or cold-blooded animal being transported by an

airline, not just those animals who are “kept as a pet in a family household in the United States” or are “being transported for the purpose of being sold as a pet in a family household in the United States.”

While the language in Section 710 of P.L. 106-181 leaves the definition of “animal” to the Secretary of Transportation, the limited definition contained herein is arbitrary and unduly and unreasonably restrictive. The original legislation on which Section 710 is based (S. 1193 and H.R. 2776, the *Safe Air Travel for Animals Act*) envisioned that the effort to improve how airlines handle animals would cover not only *all* companion animals (not just those kept by U.S. households), but other animals as well, such as those used in research and for exhibition purposes.

The airlines ship a wide variety of animals, and their obligations to ensure their safety and welfare do not vary from species to species or from companion animal to lab animal to zoo or farm animal. In its document *Live Animals Regulations*, the International Air Transport Association provides handling requirements for over 1900 species and subspecies of animals. In providing guidelines to consumers regarding the shipment of animals, American Airlines’ website notes that “[f]or the purpose of this Web site, **animals shall mean all warm and most cold-blooded species.**” Likewise, other airlines state that they accept most types of animals, with exceptions made in *very specific* cases, such as young or sick animals, or animals regarded as dangerous. And the Department of Transportation’s (DoT’s) own website says the following: “Over two million pets and **other live animals** are transported by air every year in the United States.... As a shipper or owner you also have a responsibility to take the necessary precautions to ensure the well being of the animal you ship.” DoT clearly expects the airlines to fulfill that responsibility with respect to *all* the animals they carry, not just some of them. The reporting requirement is no different: It should apply to any and all animals an individual airline transports, warm- and cold-blooded, wild and domesticated, companion or otherwise.

And it is for good reason that all animals both deserve and *need* coverage under this provision. Even a cursory review of USDA cases against airlines for violations of the *Animal Welfare Act* reveals serious incidents of injury and death involving non-pet animals; a couple of examples:

- ◆ A particularly egregious case occurred in 2000, in which a three-month old squirrel monkey being flown from Miami to Honolulu for display in a bar was dead on arrival in Honolulu.
- ◆ Also in 2000, USDA charged Delta Airlines with AWA violations in the deaths of a number of animals in three different shipments that were accepted at the Tampa, FL, airport. According to the USDA press release, “Upon arriving at their various destinations, many of the animals being shipped were dead.”
- ◆ In 2001, Delta Airlines was again charged with AWA violations, this time in the death of a fennec fox it was shipping.

Any airline that is involved in, and indeed causes or contributes to, tragedies like these that do not involve companion animals should also be required to file a report with the government, and that information should be made public.

Remove Ownership Restrictions

The definition of animal also should not be limited to those companion animals or others who are owned by, kept by, or destined for sale to family households in the United States. Coverage should extend to all animals transported by air carriers, regardless of the owner/guardian/shipper. We request that the Final Rule remove references to “a family household in the United States.” This change will not require a new “Trade Impact Assessment” because, by according equal treatment to all owners/shippers and their animals regardless of nationality, the rule will in fact be more compatible with free trade policies and standards. It will also be more consistent with the legitimate domestic objective of enhancing safety because it will treat all animals equally regardless of an irrelevant distinction like “nationality.”

Implementation Authority

We note that DoT directs the airlines to file animal-related incident reports with the Animal and Plant Health Inspection Service of USDA and directs APHIS to prescribe the “form and manner” for filing these reports, even though the law itself clearly places with DoT the responsibility for receiving, publishing, and determining the form and content of the incident reports. Moreover, since the airlines already file similar reports with DoT, it would have been logical for them to file these new reports there as well.

Our main concerns are that the reports capture the crucial information, which they will do if they conform to Section 119.72(b) of the proposed rule; and that they reach both DoT and USDA as expeditiously as possible. We have no objections if these goals can be met in the way set forth in the proposed rule, but the mechanism for sharing the information must be set forth clearly in the Memorandum of Understanding (MOU) alluded to in the Federal Register notice and required under the law. The Notice gives no indication that the MOU has been concluded. In order to expedite the sharing of this information, the MOU should stipulate that USDA is responsible only for receiving the reports and then forwarding them as is to DoT. USDA should not be expected to compile, refine, summarize, or otherwise process any of the data from these reports for DoT except as needed for USDA’s own internal *Animal Welfare Act* enforcement activities.

Urgent Need To Implement This Rule

We urge that this proposed rule, modified per our recommendations, be adopted as quickly as possible. It has already been two years since Congress adopted this requirement. The original legislation on which Section 710 is based had widespread support among the public who were horrified to learn of the dangers animals face during air transport. The blandishments of the airlines designed to convince customers of the care they lavish on their animal passengers have been a smokescreen to hide serious problems: extremes of temperature and inadequate ventilation in the cargo hold; exposure to excessive heat and cold while in the holding areas and on the tarmac; animals being thrown around and falling off conveyor belts, being loaded onto the wrong flight—or no flight at all, being completely forgotten once off-loaded, being improperly secured within the cargo hold, with shifting during flight causing injury or death, or, quite often, escape from the carrier; and other examples of gross mishandling by airline personnel. The new rule removes the shroud of secrecy about these incidents. **Such new accountability and**

transparency will provide the public with valuable new information and will no doubt motivate the airlines to do a better job safeguarding the health and safety of their animal passengers.

Need to Implement the Training Requirement of Section 710

Even more important to long-term improvement in the care of animals by the airlines, however, is better training of those airline personnel who are responsible for those animals from the time they are checked in until the time they are returned to their owners. The urgency of implementing this provision of the law cannot be overstated; again, as revealed by the litany of problems noted above and a review of *Animal Welfare Act* cases against airlines, a great number of the losses, injuries, or deaths of animals are a result of mishandling by airline workers.

Conclusion

This new rule will require very little work on the airlines' parts, but it can lead to much safer air travel for all animals. With better accountability on the airlines' parts and enhanced training for their employees, airline customers will be able to have more confidence in the airlines' handling of animals. Thank you for your diligence in implementing all of Section 710.

If you have any questions or would like additional information from us, please contact Nancy Blaney at 703-521-1689.

Sincerely,

Sara Amundson
Deputy Director
Doris Day Animal League
227 Massachusetts Avenue, NE, Suite 100
Washington, D.C. 20002

And also on behalf of:

American Humane Association
Animal Protection Institute
Animal Welfare Institute
The Fund for Animals
International Primate Protection League
Massachusetts Society for the Prevention of Cruelty to Animals
Society for Animal Protective Legislation